In the Supreme Court of the United States

OCTOBER TERM, 1970

No. ——, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF IDAHO, DEFENDANT

MOTION FOR LEAVE TO FILE COMPLAINT

The United States of America respectfully asks leave of the Court to file its complaint against the State of Idaho submitted herewith.

JOHN N. MITCHELL,
Attorney General.

ERWIN N. GRISWOLD,
Solicitor General.

JERRIS LEONARD,
Assistant Attorney General.

AUGUST 1970.

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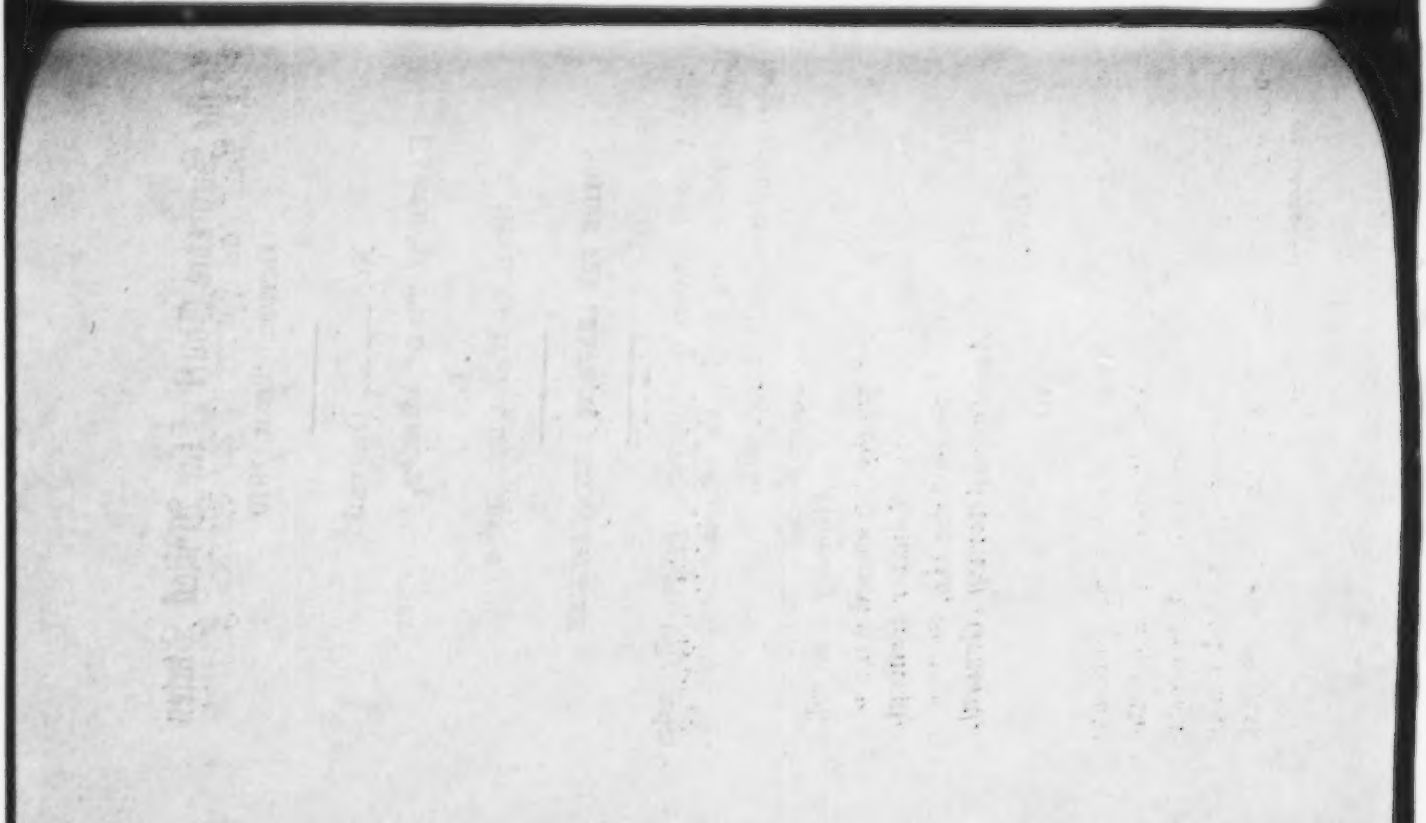

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No. ———, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF IDAHO, DEFENDANT

COMPLAINT

The United States of America, plaintiff, alleges as follows:

For a First Cause of Action:

I

This action states a controversy between the United States and the State of Idaho; this Court accordingly has original jurisdiction under Article III, Section 2 of the Constitution of the United States; see also 28 U.S.C. 1251(b)(2).

II

The United States brings this action to vindicate the supremacy of federal law. It seeks to enjoin the State of Idaho from enforcing provisions of its constitution and statutes which are contrary to and inconsistent with the Voting Rights Act of 1965, 79 Stat.

437, 42 U.S.C. (Supp. V) 1973–1973p, as amended by the Voting Rights Act Amendments of 1970, 84 Stat. 314.

III

Under Idaho law, registration is a prerequisite for voting in all elections. Idaho Constitution, Article 6, Section 2. The registration of voters is carried out by agents of the state.

IV

Under Article 6, Section 2 of the Idaho Constitution and Sections 34–408 and 34–409 of the Idaho Code, an otherwise qualified citizen who has been a resident of the state for less than six months may vote for presidential or vice presidential electors, only if he has been a resident of the state for 60 days next preceding the day of election and has fulfilled the state registration requirement by applying for a presidential ballot, in person, at least ten days prior to the day of the election.

V

Absentee voting in Idaho for a presidential election is apparently authorized only for persons who at the time of such election continue to meet that state's durational residency requirements. Idaho Code, Section 34–1101. Absentee ballots must be received by the issuing officer by noon on the day of an election. Idaho Code, Section 34–1105.

VI

Section 202 of Title II of the Voting Rights Act

of 1965, as amended, provides that no citizen of the United States who is otherwise qualified to vote in any election for president or vice president shall be denied the right to vote for electors in such elections because of the failure to comply with any durational residency requirement. Each state is required to provide means for registration and voting by all duly qualified residents of such state who apply not later than 30 days prior to any presidential election. In addition, persons who departed from a state after the thirtieth day next preceding such election are required to be allowed to vote by that state in person or by absentee ballot.

Finally, Section 202 provides that absentee ballots in presidential elections must be issued to all qualified voters who make application seven or more days prior to such elections and such ballots must be counted if returned to the appropriate election official prior to the closing of the polls. No citizen who is otherwise qualified to vote by absentee ballot may be denied that right because of any requirement of registration that does not include a provision for absentee registration.

VII

The continued enforcement of the durational residency reqirements and absentee voting provisions (to the extent inconsistent with Section 202 of the Voting Rights Act of 1965, as amended) for voting for presidential and vice presidential electors in the constitution and statutes of the State of Idaho directly conflicts with Section 202 of the Voting Rights Act of 1965, as amended, and is thus unlawful under Article VI of the Constitution of the United States.

VIII

On July 16, 1970, the Attorney General wrote (Exhibit A, *infra*, pp. 9–12) to the Governor of the State of Idaho explaining the Voting Rights Act Amendments of 1970 and seeking an assurance that the state would comply with them. By return letter, dated August 3, 1970 (Exhibit B, *infra*, pp. 12–14), the Attorney General of the State of Idaho indicated that the state would not comply with the Amended Act, unless forced to do so by court order.

IX

Unless restrained by this Court, the State of Idaho, through its agents, will continue to enforce and implement the Idaho constitutional and statutory provisions relating to registration and voting which conflict with the Voting Rights Act of 1965, as amended, and will thereby prevent and interfere with implementation of such Act.

For a Second Cause of Action:

X

Repeats and realleges paragraphs I–III.

XI

Article 6, Section 2 of the Idaho Constitution and Sections 34–401 and 34–807 of the Idaho Code provide that as a prerequisite to registration and voting, otherwise qualified citizens must have attained the age of twenty-one years prior to the date of the ensuing general election.

XII

Section 302 of Title III of the Voting Rights Act of 1965, as amended, provides that no citizen of the United States who is otherwise qualified to vote in any state or political subdivision in any primary or election shall be denied the right to vote with respect to any primary or election held on or after January 1, 1971, on account of age if such citizen is eighteen years of age or older.

XIII

The continued enforcement of the age requirements for registration and voting contained in the constitution and statutes of the State of Idaho directly conflicts with Section 302 of the Voting Rights Act of 1965, as amended, and is thus unlawful under Article VI of the Constitution of the United States.

XIV

Repeats and realleges paragraphs VIII and IX.

Plaintiff, the United States, requests that this Court issue a declaratory judgment that:

(*a*) The durational residency requirements and absentee voting provisions contained in the Constitution and statutes of the State of Idaho are unenforceable with respect to presidential elections to the extent their provisions conflict with Section 202 of the Voting Rights Act of 1965, as amended; and

(*b*) The age requirement established by the constitution and statutes of the State of Idaho is unenforceable as to any primary or election held on or after January 1, 1971, to the extent it conflicts with Section 302 of the Voting Rights Act of 1965, as amended.

Plaintiff further requests that this Court

(1) Enjoin the State of Idaho and its agents from:

(a) Enforcing the durational residency requirements and absentee voting provisions in the constitution and statutes of the State of Idaho to the extent that such requirements and such provisions are inconsistent with Section 202 of the Voting Rights Act of 1965, as amended;

(b) Enforcing the voting age provisions in the constitution and statutes of the State of Idaho to the extent that such provisions are inconsistent with Section 302 of the Voting Rights Act of 1965, as amended; and

(2) Direct the State of Idaho and its agents to adopt whatever procedures may be necessary to bring the State of Idaho into full and prompt compliance with Sections 202 and 302 of the Voting Rights Act of 1965 as amended; and

(3) Grant such other relief as the interest of justice may require.

JOHN N. MITCHELL,
Attorney General.

ERWIN N. GRISWOLD,
Solicitor General.

JERRIS LEONARD,
Assistant Attorney General.

AUGUST 1970.

APPENDIX

EXHIBIT A

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., July 16, 1970.

Hon. DON SAMUELSON,
Governor of Idaho,
Boise, Idaho.

DEAR GOVERNOR SAMUELSON: On June 22, 1970, the Voting Rights Act Amendments of 1970, Public Law 91-285, were signed by the President. I am writing in order to bring to your attention the major provisions of the new law and to request your cooperation in implementing it.

The 1970 Amendments extend for five years the period of coverage of basic provisions of the Voting Rights Act of 1965 and broaden somewhat the coverage formula of the Act; suspend until August 6, 1975, the use of literacy and similar tests in any state or county not subject to suspension under section 4(a) of the 1965 Act; eliminate durational residency requirements as a precondition for voting for President and Vice President and prescribe uniform standards regarding absentee registration and absentee voting in presidential elections; and lower to 18 the minimum age for voting in all elections. A copy of the Voting Rights Act Amendments and a section-by-section analysis of the statute are enclosed.

Our analysis of the constitutions and statutes of the various states indicates that your state has a re-

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quirement which is a "test or device" within the meaning of the Voting Rights Act. (See Ida. Code, § 34-404.) Accordingly, that requirement is now subject to suspension, until August 6, 1975, by virtue of section 201 of the Voting Rights Act as amended. Please note that the prohibition of section 201 took effect upon enactment, i.e. on June 22, 1970.

Under section 203, it is my responsibility to take all steps necessary to secure compliance with the prohibition against the use of literacy and other tests. I suggest that registration and election officials in your state be informed as soon as possible that they must cease applying any literacy (or similar) requirement.

It is possible that, in the future, your state or certain of its counties will be determined to be covered by the provisions of section 4 of the Voting Rights Act as amended. However, no such determination has yet been made. Should such determination be made in the future, we will provide explanatory material.

Title III, which reduces voting age to 18, is to take effect with respect to any election or primary held on or after January 1, 1971. The statute does not specify when persons 18 and over who are not presently eligible should be allowed to register. However, based upon normal rules of construction, it is my view that each state must afford such individuals a reasonable opportunity to register so as to be eligible to vote in any primary or election held during 1971.

According to my information, existing law in your state does not permit persons to vote until they are 21 years of age. Under the supremacy clause of the United States Constitution, the present inconsistent provision of state law is superseded.

A prompt determination by each state of the registration and election procedures it will follow for all

elections after January 1, 1971, seems essential so that appropriate arrangements can be made. Moreover, you will note that by section 303 of the new statute I am "authorized" and "directed" by Congress to institute legal proceedings necessary to implement Title III.

Accordingly, I request that you review this matter with other state officials and advise me of the instructions regarding implementation of Title III which your state will distribute to registrars and election officials. In my view, such instructions should include a clear statement that persons who will be 18 years of age or over at the time of any primary or election held on or after January 1, 1971, shall be eligible to register for and vote at such election, notwithstanding any contrary provision of state law.

The provision regarding residency requirements, section 202, relates only to voting for President and Vice President and does not affect requirements in regard to congressional or state and local elections. The section concerning residency and absentee registration and balloting contemplates express changes in state law, unless present state laws are no more restrictive than the standards prescribed by the new statute. I suggest that the requirements of section 202, particularly those as to absentee voting and absentee registration, be carefully reviewed.

In conclusion, let me request your cooperation in regard to prompt and effective implementation of the reforms prescribed by Congress. So that this Department may meet its enforcement responsibilities, I ask that you advise me at your earliest convenience of the steps to be taken by your state to carry out the above-described provisions of the Voting Rights Act as amended. Because of the urgency involved, it will be necessary for us to assume that, unless we receive a positive response by August 3, 1970, your state does

not intend to comply fully with the new statute. In any such case, we will take appropriate action to effectuate the congressional mandate.

If you have any inquiries regarding the Voting Rights Act as amended or if there is any other way that we can be of assistance, please communicate directly with Jerris Leonard, Assistant Attorney General, Civil Rights Division.

Thank you for your cooperation.

Sincerely,

JOHN N. MITCHELL,
Attorney General.

cc: Hon. Robert M. Robson,
Attorney General of the State of Idaho.

EXHIBIT B

STATE OF IDAHO,
OFFICE OF THE ATTORNEY GENERAL,
Boise, Idaho, August 3, 1970.

Re: Public Law 91–285, Voting Rights Act Amendments of 1970.

Hon. JOHN A. MITCHELL,
United States Attorney General,
U.S. Department of Justice,
Washington, D.C.

DEAR MR. MITCHELL: Governor Samuelson has transferred to this office your letter of July 16, 1970 requesting that I prepare an answer on behalf of the State of Idaho.

At this point in time it would be impossible for Idaho to meet the requirements of the subject Amendment. Our legislature is not in session and will not be until January 1971. Compliance with the amended Act would require amendment of the Idaho Consti-

tution and a number of Idaho statutes. In view of what I consider to be the precariousness of the legal hypothesis presented in support of P.L. 91-285 I would hesitate to request the Governor to call a Special Session of the Legislature, unless the Supreme Court of the United States or the Supreme Court of Idaho enters a proper decree.

Research by this office, while not exhaustive, reveals that it is reasonably clear that the Constitution of the United States provides for the election method of Federal elective officers. Article I, Section 2, United States Constitution sets forth the procedure for election of Congressmen, and the Seventeenth Amendment to the United States Constitution provides for the election of senators. It is clear that these provisions leave it to the several states to provide the qualifications of electors of the most numerous branch of the state legislature, subject only to the provisions of the United States Constitution. *Ex Parte Yarbrough,* 110 U.S. 651, 28 L. ed. 274, 4 S. Ct. 152; *Pope* v. *Williams,* 193 U.S. 621, 633, 28 L. ed. 817, 882, 24 S. Ct. 573; *Lassider* v. *North Hampton County Board of Elections,* 360 U.S. 45, 79 S. Ct. 985. It has been held that the states have broad powers to determine the conditions under which the right of suffrage may be exercised in the states; *Carrington* v. *Rash,* 380 U.S. 89, 13 L. ed. (2), 675, 85 S. Ct. 775; *Kramer* v. *Union Free School District,* 395 U.S. 621, 23 L. ed. 2d. 583, 89 S. Ct. 1886.

While some argument favorable to the subject Amended Act may be made by interpretation of the Fourteenth Amendment, Section 5, U.S. Constitution, and Article VI of the United States Constitution, as interpreted by *Katzenbach* v. *Morgan,* 834 U.S. 641, 16 L. ed. 828, 86 S. Ct. 1717; we believe that it is clear historically that such an approach cannot be used to

revise the language and intent of the United States Constitution, and those of the several states without destroying completely the foundation of the Federal system.

On behalf of the State of Idaho I must respectfully reject the enforcement of the provisions of the Amended Act without specific Court order. We will stand available to assist in the preparation of a proper foundation for a court test of P.L. 91.285.

Very truly yours,

ROBERT M. ROBSON.

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. ——, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF IDAHO, DEFENDANT

MOTION FOR EXPEDITED CONSIDERATION

The United States respectfully moves the Court to expedite consideration of the case as follows:

(*a*) By requiring any response to the attached motion for leave to file to be submitted by August 31, 1970; and

(*b*) By establishing a briefing schedule that will permit the case to be heard at the October argument session, if the Court grants leave to file when it reconvenes in October. The United States will file its brief on the merits by September 10, and suggests that the defendant's brief on the merits should be filed by October 5.

JOHN N. MITCHELL,
Attorney General.

ERWIN N. GRISWOLD,
Solicitor General.

JERRIS LEONARD,
Assistant Attorney General.

AUGUST 1970.

U.S. GOVERNMENT PRINTING OFFICE: 1970

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. ———, Original

UNITED STATES, PLAINTIFF

v.

STATE OF ARIZONA, DEFENDANT

No. ———, Original

UNITED STATES, PLAINTIFF

v.

STATE OF IDAHO, DEFENDANT

BRIEF IN SUPPORT OF MOTIONS FOR LEAVE TO FILE ORIGINAL COMPLAINTS, MOTIONS FOR EXPEDITED CONSIDERATION AND MOTION FOR INTERIM RELIEF

JURISDICTION

The jurisdiction of this Court to entertain the original complaints of the United States against the States of Arizona and Idaho rests on Article III, Section 2 of the United States Constitution; see also 28 U.S.C. 1251(b)(2).

QUESTION PRESENTED

Whether the Voting Rights Act Amendments of 1970 are constitutional insofar as they (1) suspend

the use of literacy tests as prerequisites for voting in states or their political subdivisions not subject to suspension under the Voting Rights Act of 1965, (2) eliminate durational residency requirements in regard to voting for President and Vice President and prescribe uniform standards regarding absentee registration and absentee balloting in presidential elections and (3) reduce to 18 the minimum age for voting in all elections.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment provides in pertinent part as follows:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> * * * * *
>
> Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The Fifteenth Amendment provides as follows:

> Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
>
> Section 2. The Congress shall have power to enforce this article by appropriate legislation.

The Voting Rights Act Amendments of 1970, P.L. 91-285, 84 Stat. 314, are set forth in Appendix A, *infra*, pp. 35–43.

The pertinent provisions of Article 7, Section 2 of the Arizona Constitution and Sections 16–101 and 16–107 of the Arizona Revised Statutes are set forth in Appendix B, *infra*, pp. 44–45.

The pertinent provisions of Article 6, Section 2 of the Idaho Constitution and Sections 34–401, 34–408, 34–409, 34–1101, and 34–1105 of the Idaho Code are set forth in Appendix C, *infra*, pp. 46–48.

STATEMENT

The Voting Rights Act Amendments of 1970 were signed by the President on June 22, 1970. The new law extends for five years operation of section 4(a) of the Voting Rights Act of 1965, the provision whose primary effect was to suspend the use of literacy tests in six Southern states and part of a seventh state, and adds two new titles to the 1965 Act. Title II contains provisions which suspend the use of literacy tests in all states and counties not already subject to suspension by virtue of the 1965 Act, abolish durational residency requirements with respect to voting for President and Vice President and establish uniform standards regarding absentee registration and absentee balloting in presidential elections. Title III reduces to 18 the minimum age for voting in all elections.

The Voting Rights Act Amendments specifically authorize and direct the Attorney General to enforce their provisions. See Sections 203 and 303(a)(1). In order to meet this responsibility, the Attorney

General wrote to the Governor of each state explaining the new law and seeking an affirmative assurance that the state would comply with it (See, *e.g.*, Exhibit A to each complaint). The Attorneys General of Arizona and Idaho stated that their states would not comply with the statute (Exhibit B to each complaint). Accordingly, the United States is seeking to institute these actions against the states of Arizona and Idaho to enjoin operation of the provisions of their constitutions and statutes that are inconsistent with the Voting Rights Act Amendments.

The suit against Arizona seeks to enforce compliance with sections 201 and 302 of the Act. Section 201, which took effect upon enactment, suspends until August 6, 1975, the use of literacy and other voting tests;[1] Section 302, applicable to any primary or election held on or after January 1, 1971, lowers the voting age to 18.[2]

The action against Idaho seeks to compel that state to comply with Section 202 of the Act, which abolishes durational residency requirements for voting in presidential elections and establishes uniform standards

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[1] Under Section 16-101(A)(4) of the Arizona Revised Statutes, an applicant may not register to vote unless he is able to read the Constitution of the United States in the English language. Section 16-101(A)(5) of the Arizona Revised Statutes provides that an applicant must be able to write his name as a prerequisite to registration.

[2] Article 7, Section 2 of the Constitution of Arizona and Section 16-101(A)(2) of the Arizona Revised Statutes, provide that as a prerequisite to registration and voting, otherwise qualified citizens must have attained the age of twenty-one prior to the date of the ensuing general election.

relative to absentee registration and balloting in presidentical elections,[3] and with Section 302.[4]

The complaints seek declaratory and injunctive relief. In addition, because Section 201 took effect upon enactment and thus is applicable to elections to be held this fall, we are seeking interim relief to require Arizona to permit illiterate, but otherwise qualified persons to register on a provisional basis so that such persons may vote in the November 3, 1970, general election if the Court decides this case in favor of the United States prior to such date.

ARGUMENT

The burden of our present argument is that the complaints present controversies within the original jurisdiction of this Court and that, in light of the nature of the cases the Court should exercise that jurisdiction by granting the motions for leave to file the complaints and setting the cases down for consideration on an expedited basis, together with the com-

[3] Under Article 6, Section 2 of the Idaho Constitution and Sections 34-408 and 34-409 of the Idaho Code, an otherwise qualified citizen who has been a resident of the state for less than six months may vote for presidential and vice presidential electors, only if he has been a resident of the state for 60 days next preceding the election and has fulfilled the state registration requirement by making application for a presidential ballot, in person, at least ten days prior to the election.

[4] Article 6, Section 2 of the Idaho Constitution and Section 34-401 of the Idaho Code provide that as a prerequisite to registration and voting, otherwise qualified citizens must have attained the age of twenty-one years prior to the date of the ensuing general election.

plaints filed by Oregon and Texas in *Oregon* v. *Mitchell*, No. 43, Original, and *Texas* v. *Mitchell*, No. 44, Original.

I. THIS COURT HAS ORIGINAL JURISDICTION TO ENTERTAIN THE COMPLAINTS

This Court has original jurisdiction to entertain the complaints if they state justiciable controversies between the United States and the States of Arizona and Idaho. U.S. Constitution, Art. III, Sec. 2; 28 U.S.C. 1251(b)(2); *South Carolina* v. *Katzenbach*, 383 U.S. 301; see *United States* v. *West Virginia*, 295 U.S. 463, 470, and cases therein cited. Although the jurisdiction of this Court is not exclusive, since Congress has vested concurrent jurisdiction in the district courts, see Sections 203 and 303 of the Act (Appendix A, *infra*, pp. 40, 42), the statutes empowering district courts to entertain such proceedings do not deprive this Court of the original jurisdiction conferred on it by the Constitution.[5] *South Carolina* v. *Katzenbach*, *supra*. The only open questions, therefore, are (1) whether the United States is the proper party plaintiff, (2)

[5] Article III provides that "In all Cases * * * in which a State shall be Party, the supreme Court shall have original Jurisdiction." No provision is made for congressional regulation of such jurisdiction—in sharp contrast to cases in which "the supreme Court shall have appellate Jurisdiction * * * with such Exceptions, and under such Regulations as the Congress shall make." Congress thus may not limit the Court's original jurisdiction. See *Marbury* v. *Madison*, 1 Cranch 137, 174; *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 332. In light of this constitutional principle, the fact that Congress provided only for suit in a three-judge district court to enforce the Voting Rights Act Amendments cannot be interpreted as intended to preclude this Court's original jurisdiction.

whether Arizona and Idaho are the proper defendants, and (3) whether an actual controversy exists between the parties in each instance.

A. The United States has inherent power to vindicate its rights in its own courts without special legislative authorization. See *United States* v. *California*, 332 U.S. 19, 27; *Sanitary District of Chicago* v. *United States*, 266 U.S. 405, 425–426; *Kern River Co.* v. *United States*, 257 U.S. 147, 154–155; *United States* v. *San Jacinto Tin Co.*, 125 U.S. 273, 278–280, 284–285. Whatever its non-statutory standing to enforce the federal rights of citizens, the United States has the inherent authority and responsibility to vindicate the supremacy of federal law and the integrity of a national program against state resistance—an interest quite distinct from that of the individual beneficiaries of the Voting Rights Act. See *In re Debs*, 158 U.S. 564; *Faubus* v. *United States*, 254 F. 2d 797 (C.A. 8), certiorari denied, 358 U.S. 829; *Bush* v. *Orleans Parish School Board*, 190 F. Supp. 861, 866 n. 9 (E.D. La.), affirmed *sub nom. New Orleans* v. *Bush*, 366 U.S. 212; *Bush* v. *Orleans Parish School Board*, 191 F. Supp. 871, 875–879 (E.D. La.), affirmed *sub nom. Denny* v. *Bush*, 367 U.S. 908; *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. 649 (E.D. La.), affirmed, 368 U.S. 515; *United States v. Mississippi*, No. 19,475, decided September 9, 1962 (C.A. 5), leave granted to United States to be joined as respondent, certiorari denied *sub nom. Mississippi* v. *Meredith*, 372 U.S. 916. That is the essence of these cases. The complaints do not assert the personal rights of individuals, but the broader right of the United States

to secure obedience to its law as required by the Supremacy Clause.

There is also a statutory basis for standing in these cases. Sections 203 and 303 of the Voting Rights Act Amendments (Appendix A, *infra*, pp. 40, 42) explicitly provide for proceedings by the United States to enforce the Act.[6] The validity of such provisions conferring standing is settled by *United States* v. *Raines*, 362 U.S. 17, and *United States* v. *Mississippi*, 380 U.S. 128. See, also, *Alabama* v. *United States*, 371 U.S. 37; *Louisiana* v. *United States*, 380 U.S. 145.

Thus, it is plain that the United States is authorized to institute these actions in its own name.

B. Arizona and Idaho are proper defendants in these cases. At least since *United States* v. *Texas*, 143 U.S. 621, it has been settled that the states, by joining the Union and submitting to the Constitution, surrendered any claim of "sovereign immunity" as against the national government. And all other constitutional objections were rejected in *United States* v. *Mississippi*, 380 U.S. 128, 138–141. See, also, *Alabama* v. *United States*, 371 U.S. 37; *Louisiana* v. *United States*, 380 U.S. 145. Sections 203 and 303 both provide that a state may be made the defendant in an enforcement action.

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[6] The letter of Arizona's Attorney General (Exhibit B to Complaint against Arizona) gives ample "reason to believe that [Arizona] * * * is seeking to administer any test or device as a prerequisite to voting in violation of the prohibition contained in Section 201" (Section 203) as well as ample basis for determining that this suit is required to enforce against Arizona the provisions of Title III (Section 303). In like manner, the letter of Idaho's Attorney General (Exhibit B to Complaint against Idaho) justifies proceedings under such sections to enforce the provisions of Section 202 and Title III.

Moreover, Arizona and Idaho are the *appropriate* defendants in these cases. Acting through their chief legal officers, both states have announced policies of disobedience of the statute. These statements unquestionably will have an immediate impact upon officials in both states. Election officials, aware of the respective statements, will necessarily be reluctant to register persons younger than twenty-one, permit registration (in Arizona) without first administering the literacy test,[7] or permit registration (in Idaho) in violation of the durational residency requirements and thus ~~that a state may be made the defendant in an enforce~~ to act inconsistently with the official state view. The true controversies are thus with the States of Arizona and Idaho themselves. Underlying these controversies are state decisions, reached at the highest level, to resist the Voting Rights Act Amendments and continue to apply state voting qualifications invalidated by the federal law.

The enforceability of the affected provisions of each state's constitution and statutes—for each state as a whole—is at issue in both cases. The burden of the defense appropriately falls on the states themselves. No fully effective remedy can be given until each state, in all its governmental operations, is enjoined from ignoring the supremacy of the Voting Rights Act Amendments. In short, the named states are the

[7] One county in Arizona, however, has indicated that it will comply, at least in part, with the new federal law. The government received a telegram from an official of Pima County stating that illiterates would be registered in that county.

real parties in interest and it is appropriate that they be held to answer; to hold the contrary "would without justification in reason diminish the power of courts to protect the people of this country against deprivation and destruction by States of their federally guaranteed rights." *United States* v. *Mississippi,* 380 U.S. 128, 141.

C. Each of the causes of action stated in the complaints presents a case or controversy appropriate for resolution by the judicial process.

Section 201, suspending literacy tests until August 6, 1975, is immediately effective. Yet, Arizona insists upon its right to administer, and is continuing to administer, its literacy test in contravention of the federal law. Thus, there is an immediate controversy. Whether or not it will prove too late to grant effective relief for this fall's elections (see pp. 20–22, *infra*), the controversy remains alive for each succeeding election. *Moore* v. *Ogilvie,* 394 U.S. 814.

Section 202, the residency provision, will first be relevant in the 1972 presidential elections. Again, however, immediate action on the part of the state is called for. The subject of the section is relatively complex, and the section envisions that the states will enforce it by legislative means, conforming their own statutes where necessary to the federal standards.

Most states responding to the Attorney General's request have indicated their intention to submit appropriate legislation amending conflicting state laws during the forthcoming legislative sessions, and we assume that Idaho, if compelled to obey the federal

statute, would take a similar course. The conflict between state and federal laws is thus real and immediate, in view of the state's formal refusal to comply with the Voting Rights Act Amendments; the fact that it will first be significant in an election to occur in 1972 does not deprive the controversy of justiciability. *Moore* v. *Oglivie, supra.*

In the case of Title III, the obligations of Arizona and Idaho to register persons between the ages of eighteen and twenty-one to vote matures immediately following the general election to be held on November 3, 1970, when the registration books in the two states will be open for registration for subsequent elections.[8] Arizona Revised Statutes, Section 16-101, Idaho Code, Section 34-807. The present age requirements in effect in the two states together with the present refusal of state officials to prepare for post-election registration, are sufficient to create controversies suitable for judicial resolution. *Pierce* v. *Society*

[8] Title III is effective "with respect to any primary or election held on or after January 1, 1971." Section 305. The date of its effectiveness for purposes of registration and other preparatory acts is unstated. The most reasonable inference is that the Act requires the registration of eighteen year olds as soon as that becomes possible without risk of interference with elections held prior to January 1, 1971. For, aside from delays warranted to give effect to Congress' intent not to apply the provision to this fall's general elections, the statute requires that eighteen year olds be treated like other voters in every way. Moreover, the numerous special elections—for example, for the approval of bond issues—which may be held at any time of year and which are within the purview of Title III require that registration be possible for a reasonable time before the year begins.

of Sisters, 268 U.S. 510, 536. Indeed, this Court found a *1972* election issue, no less abstract, litigable *last* year. *Moore* v. *Ogilvie,* 394 U.S. 814;[9] cf. *South Carolina* v. *Katzenbach, supra.*

This litigation neither presents the risks of a collusive suit, nor seeks an advisory opinion. It arose out of the United States Attorney General's demand on the states for assurance that they would comply with the new federal law. That demand was appropriate, in view of the widespread expressions of constitutional doubt which had been broadcast regarding the statute, and the need to protect national election processes from uncertainty. To wait until the eve of a particular election to seek enforcement of the statute against recalcitrant states would be to forfeit its enforcement for that election. Cf. *South Carolina* v. *Katzenbach, supra.*

Arizona and Idaho, in turn, were free in their choice of response. Like most states, they might have acquiesced in the supremacy of federal law. They could have obeyed the statute provisionally, bringing suit here or in the District Court for the District of Columbia to enjoin enforcement of the provisions they believe unconstitutional. They chose to resist. The United

[9] *Brockington* v. *Rhodes,* 396 U.S. 41, and *Hall* v. *Beals,* 396 U.S. 45, presented more tenuous issues. In *Brockington,* the appellant had limited his request for relief to the 1968 election; in view of this limitation, the action became moot once the election was held. In *Hall,* Colorado's subsequent enactment of an amendatory statute made the appellants unrepresentative of the class they purported to represent since, under the new provision, they could have registered for Colorado elections had it been in effect.

States did not procure that resistance, and is entitled to the aid of its courts in bringing it, if unwarranted as we believe, to a speedy end.

II. THESE ARE APPROPRIATE CASES FOR THE EXERCISE OF THE ORIGINAL JURISDICTION OF THIS COURT

A. Normally, in cases of concurrent jurisdiction, the plaintiff—here the United States—chooses the forum and, in the absence of some special statutory provision (*e.g.*, permitting removal), his choice is binding, unless the court, applying the principle of *forum non conveniens,* finds that the balance of conveniences as between the parties makes the forum of the plaintiff's choice clearly inappropriate. See 28 U.S.C. 1404(a). No such ground appears here.

To be sure, the rule is not fully applicable to cases within the non-exclusive original jurisdiction of this Court, with respect to which a more expansive principle of inconvenient forum has been expressed. Thus, it has been said that leave to file an original action may be denied "where there is no want of" a "suitable" alternative forum; where assumption of original jurisdiction "might seriously interfere with the discharge by this Court" of its other responsibilities; where "'considerations of convenience, efficiency and justice'" counsel abstention—where, in short, there is "need of the exercise of a sound discretion in order to protect this Court from an abuse of the opportunity to resort to its original jurisdiction." *Massachusetts* v. *Missouri,* 308 U.S. 1, 19. See, also, *Louisiana* v. *Cummins,* 314 U.S. 580; *Georgia* v. *Pennsylvania R.*

Co., 324 U.S. 439, 464–465; *id.*, 469–470 (dissenting opinion). Yet, here, too, the plaintiff's decision to invoke the original jurisdiction of this Court is entitled to respect and will not be overridden in the absence of important countervailing considerations.[10]

B. Reasons for declining jurisdiction include the presence of factual issues that could more practicably be determined in a state or lower federal court. Cf. *United States* v. *Texas*, 339 U.S. 707, 715. In the October 1965 Term, this Court denied the government's motion for leave to file a complaint in *United States* v. *Alabama*, *United States* v. *Mississippi*, and *United States* v. *Louisiana*, 382 U.S 897. There, an important and perhaps controlling factor in the Court's exercise of its discretion was the presence of factual issues whose resolution might have proven burdensome. Those actions involved provisions of the Voting Rights Act of 1965 which called for administrative implementation by federal examiners.

But, there is no such obstacle to the exercise of this Court's jurisdiction in the present cases, for the provisions of the Voting Rights Act Amendments of 1970 which are sought to be enforced do not require such administrative implementation. The complaints which we ask the Court's leave to file present only questions of law. Furthermore, the non-compliance of the defendant

[10] We suggest no disinclination on the part of the defendants to acquiesce in the resolution of the controversy in this Court. On the contrary, Texas and Oregon have invoked this forum (*Oregon* v. *Mitchell*, No. 43, Original, *Texas* v. *Mitchell*, No. 44, Original) and Arizona and Idaho may well agree that a direct adjudication here is desirable.

states is based solely on the constitutional issues so that it is unlikely that the Court would be required continually and closely to supervise implementation of the decrees we request.

The present actions, in which the United States seeks to secure compliance with recently enacted federal legislation protecting fundamental political rights, are also clearly distinguishable from the litigation involved in *Massachusetts* v. *Missouri*, 308 U.S. 1. In refusing its discretionary original jurisdiction in that case involving the effort of one state to collect a tax claim against a citizen of another state, the Court appears to have been specifically concerned about establishing a precedent requiring the Court to entertain frequent original actions in matters of relatively little moment. In contrast, the present suits involve rare, direct confrontations between states and the federal government. It is, we submit, precisely for the resolution of such serious disputes that this Court's original jurisdiction over controversies between the United States and a state is most appropriately invoked.

The issues presented by the complaints will not require a trial, and the states themselves are the only parties called upon to respond. As we view the cases, neither extensive pleadings nor elaborate factual presentations will be necessary. The issue which controls this litigation—and fully disposes of it—is the constitutionality of three provisions of the Voting Rights Act Amendments of 1970, a question which must reach this Court in due course and may appropriately be resolved here in the first instance.

That determination does not require an evidentiary trial. To be sure, Arizona and Idaho may wish to challenge the appropriateness of the legislation to implement the Fourteenth Amendment and "legislative facts" may be relevant to that question. See *United States* v. *Carolene Products Co.*, 304 U.S. 144, 152–154. "But by their very nature such inquiries, where the legislative judgment is drawn in question, must be restricted to the issue whether any state of facts either known or which could reasonably be assumed affords support for it." *Id.* at 154. So long as there is a "rational basis" for the congressional action, the Court's function is at an end. *Katzenbach* v. *Morgan*, 384 U.S., 641; *Katzenbach* v. *McClung*, 379 U.S. 294, 303–304.

C. We believe it is important that this Court hear this suit in conjunction with the actions recently filed against Attorney General Mitchell by Texas and Oregon. Those actions challenge only one part of the Voting Rights Act Amendments—Title III, which creates a nationwide voting age of 18. It is about this provision that the bulk of constitutional controversy has arisen. But the eighteen-year-old vote is only one part of the statute, and Congress' adoption of Title III must be seen against the backdrop of the statute as a whole. The constitutional justification for Title III is very similar to that for Sections 201 and 202, all relying heavily on congressional findings of discrimination and this Court's opinion in *Katzenbach* v.

Morgan, supra. While the congressional findings differ as between the voting age, residency and literacy test issues, the underlying problems are closely similar.

Thus, although the government's causes of action against Arizona and Idaho relating to Title III raise no issue not already before this Court in the Oregon and Texas suits, the other causes of action of those complaints present questions which supplement those suits in an important way, by placing before this Court, in proper perspective, the full panoply of voting reforms sought to be implemented by Congress through the passage of the Voting Rights Act Amendments.

III. THE CASES ARE SUSCEPTIBLE OF EXPEDITED CONSIDERATION IN THIS COURT

We agree with the suggestion of Texas and Oregon, in their suits against Attorney General Mitchell, that it is important to secure a prompt resolution of the constitutional issues regarding the eighteen-year-old vote and accordingly have suggested an accelerated schedule of briefing and argument if the Court grants the requested leave to file the compliants. For the reasons already stated, we believe these cases should be heard together with those two.

In addition, the imminence of this fall's elections makes it apparent that there must be an early hearing of the complaint against Arizona insofar as it concerns that state's non-compliance with Section 201. It has been estimated that approximately 73,200 persons otherwise eligible to vote in Arizona are unable to qualify under present state laws because of their

illiteracy.[11] If there is to be any hope of securing the vote for such persons in the upcoming general elections, relief must be forthcoming promptly.

Expedited consideration would be foreclosed, however, if the usual procedure in original actions were to be followed. Under that procedure, the defendant has 60 days to respond to a motion for leave to file. Accordingly, we have moved for expedited consideration of the cases, including prompt responses to our motions for leave to file. We submit that an accelerated schedule is wholly appropriate in the circumstances.

Although the confrontation between the United States and the several States involved is acute and the issue that divides the parties is of great moment, the legal question is not complex. The dispute requires no clarification: it appears on the surface and need not be defined by a long series of pleadings or sifted out of a mass of evidence or exhibits. The parties have taken their stand and already know the basis for their respective positions. As we have noted, facts are not at issue and no trial is involved. All that remains is the articulation of supporting arguments on each side. Against that background it seems not unreasonable to suggest that the parties may properly be required to present their case within such time limits as will permit the Court to decide the controversy before January 1, 1971, when elections will begin to

[11] See Hearings on Amendments to the Voting Rights Act before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee, 91st Cong., 1st and 2d Sess., p. 216 (hereinafter "Sen. Hearings").

be affected by Title III, and if possible, before this fall's general elections. Compare *Williams* v. *Rhodes*, 393 U.S. 23.

To this end, we have moved that the defendants be required to file any response to the accompanying motions by August 31, we shall file our brief on the merits by September 10 and we suggest that the defendants file their briefs on the merits by October 5. it reconvenes in October, the cases could be heard at the October argument session.

While the requested acceleration would involve a relatively short time for briefing these important cases, the parties will have substantial notice and opportunity for preparation from the filing of this motion. The Court has granted acceleration of its proceedings in other cases of great urgency and importance. See, *e.g.*, *Hannah* v. *Larche*, 361 U.S. 910; *United States* v. *Thomas*, 361 U.S. 950; *Cooper* v. *Aaron*, 358 U.S. 1; *Wilson* v. *Girard*, 354 U.S. 524; *Youngstown Co.* v. *Sawyer*, 343 U.S. 579; *Ex parte Quirin*, 317 U.S. 1. The very generous time allotments for pleadings and briefs made by the Court's present Rules appear designed for the more usual original actions involving exceedingly complex and factually intricate property disputes. Considering the very different character of the present cases, the policy of the Rules is not opposed to our request for expedited treatment. The course we suggest affords

the best means of assuring an orderly presentation of the important issues involved in sufficient time to permit effective implementation of the federal act.

V. THIS COURT SHOULD GRANT INTERIM RELIEF DIRECTING ARIZONA TO REGISTER FOR THIS FALL'S GENERAL ELECTIONS OTHERWISE QUALIFIED PERSONS WHO ARE ILLITERATE

Arizona is presently refusing to register illiterates, in flat disobedience to Section 201. Registration books close, by statute, at the close of business on the seventh Monday preceding the election—in this case, September 21, 1970. Arizona Revised Statute, Section 16–107 (1969 Supp.). In order to preserve the possibility that illiterates will be allowed the vote in this fall's elections if Section 201 is upheld, it is necessary to require the state to register such persons provisionally—either in advance of the closing of the state's registration books or, if that cannot be done, on a special basis—to enforce the federal statute.

The United States has therefore moved for an interim order, directing Arizona to register illiterate persons otherwise eligible to vote in this fall's elections on a provisional basis so that, if the statute is upheld, they can be permitted to vote. If it proves impossible for the Court to act on this aspect of our pleadings before September 1, or its reconvening on October 5, we suggest that the Court provide for a meaningful period—three weeks in our view would be sufficient—in which to effect this registration irrespective of the state's ordinary closing law. Other-

wise, the federal act can not possibly be given effect for this fall's elections.

Similar relief was given by Mr. Justice Stewart in an appellate docket case which arose during summer recess, *Williams* v. *Rhodes*, 393 U.S. 23, 27, 28. And the Court has entertained and acted upon a request for interim relief in an original action, after a motion for leave to file a complaint had been granted. *United States* v. *Arizona*, 294 U.S. 692, 693, 695. We have found no situation in which such relief was sought in an original case in advance of the granting of leave to file, but we believe this Court clearly possesses the power to so act. It has the authority to issue all writs necessary or appropriate in aid of its jurisdiction, 28 U.S.C. 1651, and Fed. R. Civ. P. 65, authorizing such relief through temporary or permanent injunction, applies in original actions by virtue of Rule 9(2) of the Rules of this Court. Furthermore, Rule 51(1) provides that "writs of injunction may be granted by any justice in cases where they might be granted by the court." We believe that consultation among the justices on the government's motion for interim relief would be highly desirable; we suggest only that there is no need to wait until the Court reconvenes in October to grant the requested interim relief.

The relief we seek would not prejudice Arizona's interest in keeping its rolls free from persons not entitled to be registered should Section 201 be found unconstitutional. It would be entirely proper to keep

a separate registry of, or otherwise identify, those persons registered under the Court's order, so that they could be excluded from the polls in the event the statute was not upheld. The possible expense or inconvenience of registering such persons would not appear to be great, particularly if it can be done at the same time as the state's registration books are ordinarily open for registration. On the other hand, if registration is not ordered, the individuals denied it will have lost irretrievably their right to vote this fall.

Finally, the government's chances of success on the merits of its complaint are substantial. In support of our motion for interim relief against Arizona, we turn now to a discussion of the validity of Section 201.

A. It is well settled that, just as the Fifteenth Amendment prohibits racially discriminatory abridgement of the franchise, the Fourteenth Amendment prohibits restrictions on the right to vote which violate the Equal Protection Clause.[12] Furthermore, Congress is empowered to enforce the provisions of each amendment by "appropriate legislation." Fifteenth Amendment, Section 2; Fourteenth Amendment, Section 5. The nature of this congressional authority was considered at length in *South Carolina* v. *Katzenbach*,

[12] The Court has struck down, on the ground of inconsistency within the Equal Protection Clause, a variety of limits on the right to vote. See, *e.g.*, *Baker* v. *Carr*, 369 U.S. 186; *Reynolds* v *Sims*, 377 U.S. 533; *Carrington* v. *Rash*, 380 U.S. 89; *Harper* v. *Virginia Bd. of Elections*, 383 U.S. 663; *Kramer* v. *Union Free School District*, 395 U.S. 621; *Cipriano* v. *City of Houma*, 395 U.S. 701; *City of Phoenix* v. *Kolodziejski*, No. 1066, O.T. 1969, decided June 23, 1970; *Moore* v. *Ogilvie*, *supra*; *Williams* v. *Rhodes*, 393 U.S. 23; *Evans* v. *Cornman*, No. 236, O.T. 1969, decided June 15, 1970.

383 U.S. 301, and *Katzenbach* v. *Morgan*, 384 U.S. 641.

In *South Carolina* v. *Katzenbach*, this Court upheld the constitutionality of major provisions of the Voting Rights Act of 1965, including Section 4(a), which suspended the use of tests in states and counties which came within a specified coverage formula.[13] Regarding the authority of Congress, the Court stated (383 U.S. at 326–327):

> The basic test to be applied in a case involving § 2 of the Fifteenth Amendment is the same as in all cases concerning the express powers of Congress with relation to the reserved powers of the States. Chief Justice Marshall laid down the classic formulation, 50 years before the Fifteenth Amendment was ratified:
>
> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *McCulloch* v. *Maryland*, 4 Wheat. 316, 421.

Under similar reasoning the Court in *Katzenbach* v. *Morgan* held Section 4(e) of the Act[14] to be a proper exercise of the power granted Congress by Section 5 of the Fourteenth Amendment. Expressly rejecting the view that the authority of Congress to prohibit enforcement of a state law, under that Section, was restricted to situations where a court had

[13] Section 4(a), 42 U.S.C. (Supp. V) 1973b(a). The coverage formula is set forth in section 4(b), 42 U.S.C. (Supp. V) 1973b(b).

[14] Section 4(e), 42 U.S.C. (Supp. V) 1973b(e), is the provision which in effect prohibited the application of English language literacy tests to persons educated in Puerto Rico.

found or would find the state law to be unconstitutional, the majority stated (384 U.S. at 648–649):

> Neither the language nor history of § 5 supports such a construction. As was said with regard to § 5 in *Ex parte Virginia*, 100 U.S. 339, 345, "It is the power of Congress which has been enlarged. Congress is authorized to *enforce* the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective." A construction of § 5 that would require a judicial determination that the enforcement of the state law precluded by Congress violated the Amendment, as a condition of sustaining the congressional enactment, would depreciate both congressional resourcefulness and congressional responsibility for implementing the Amendment. It would confine the legislative power in this context to the insignificant role of abrogating only those state laws that the judicial branch was prepared to adjudge unconstitutional, or of merely informing the judgment of the judiciary by particularizing the "majestic generalities" of § 1 of the Amendment. See *Fay* v. *New York*, 332 U.S. 261, 282–284. [Footnotes omitted.]
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> [O]ur task in this case is not to determine whether the New York English literacy requirement as applied * * * [to persons educated in Puerto Rico] violates the Equal Protection Clause. * * * [The question is:] Without regard to whether the judiciary would find that the Equal Protection Clause itself nullifies New York's English literacy requirement as so applied, could Congress prohibit the enforcement of the state law by legislating under § 5 of the Fourteenth Amendment? * * *

The Court held (384 U.S. at 650–651) that, in determining whether federal legislation based upon the Fourteenth Amendment is "appropriate," the applicable standard is that set forth in *McCulloch* v. *Maryland*, 4 Wheat. 316—the same test relied upon, in regard to the Fifteenth Amendment, in *South Carolina* v. *Katzenbach*, *supra*. Section 5 was described as a "positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment."

In finding the enactment of Section 4(e) to be a valid exercise of this legislative power, the Court perceived two permissible bases for the legislation. The first was to enable Puerto Ricans in New York and the other states to obtain, through increased voting strength, nondiscriminatory treatment in public services (*e.g.*, schools). The Court stated that it was for Congress to weigh the various conflicting considerations, including alternative means of remedying discrimination in governmental services, and to determine whether section 4(e) was needed to further the aim of the Equal Protection Clause. As to judicial review, "It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did" (384 U.S. at 653).

The second basis was a congressional desire to eliminate what Congress found to be invidious discrimination in establishing voter qualifications. After referring to the fundamental importance of the right to vote, on the one hand, and the possible interests of

the state in requiring English literacy on the other, the Court said (384 U.S. at 655–656):

> * * * Since Congress undertook to legislate so as to preclude the enforcement of the state law, and did so in the context of a general appraisal of literacy requirements for voting * * * to which it brought a specially informed legislative competence, it was Congress' prerogative to weigh these competing considerations. Here again, it is enough that we perceive a basis upon which Congress might predicate a judgment that * * * [the New York requirement] constituted an invidious discrimination in violation of the Equal Protection Clause. [Footnote omitted.]

While two members of the Court dissented, they recognized that (384 U.S. at 668):

> * * * Decisions on questions of equal protection and due process are based not on abstract logic, but on empirical foundations. To the extent "legislative facts" are relevant to a judicial determination, Congress is well equipped to investigate them, and such determinations are of course entitled to due respect. [Footnote omitted.]

In effect, therefore, all members of the Court agreed that congressional findings in the area of equal protection, including in particular "matters of popular political participation" (384 U.S. at 670), are to be given substantial weight by the judiciary.

Section 201 of the Voting Rights Act as amended was based upon determinations by Congress that literacy tests and other "tests and devices"[15] (1)

[15] The term "test or device" is defined in Section 201(b), 84 Stat. 315.

have discriminatory effect upon Negroes and other minorities and (2) in any event, are not justified by any substantial interest of the states.[16] As will be shown, these and the other congressional findings underlying Section 201 were fully supported by the legislative record.

B. Section 201 suspends, until August 6, 1975, the use of literacy tests and any similar "test or device" in any state or political subdivision not subject to suspension by reason of Section 4(a) of the 1965 Act.[17] The literacy-test areas which are covered by Section 201 are the States of Alaska, Arizona (except Yuma County), California, Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New York, Oregon, Washington, Wyoming, and 61 counties in North Carolina.

1. In *South Carolina* v. *Katzenbach, supra,* 383 U.S. 301, 329, the Court noted that, in most of the states covered by the Voting Rights Act of 1965, literacy tests had been purposely administered so as to disfranchise Negroes. With respect to the states subject to

[16] In enacting the Voting Rights Act Amendments, Congress also expressly relied upon the rule, enunciated in *Kramer* v. *Union Free School District*, 395 U.S. 621, *Cipriano* v. *City of Houma*, 395 U.S. 701, and other cases, that state laws limiting the right to vote are subject to a stricter test of constitutionality than are laws affecting other, less vital areas. See, *e.g.*, 116 Cong. Rec. 2758 (daily ed., March 2, 1970) (joint statement of ten members of Senate Judiciary Committee).

[17] The jurisdictions presently subject to suspension under Section 4(a) of the Voting Rights Act are the States of Alabama, Georgia, Louisiana, Mississippi, South Carolina and Virginia; 39 counties in North Carolina; one county in Arizona; and one county in Hawaii.

suspension under Section 201 of the Act as amended, Congress did not have similar evidence of *intentional* abuse in the administration of tests, but there was evidence before Congress that the practical effect of tests wherever imposed was to discriminate against Negroes,[18] other minorities[19] and the poor.[20] As decisions of this Court following *South Carolina* v. *Katzenbach* have made clear, however, Congress' power to suspend literacy tests is not confined to the suspension of tests administered to effect *intentional* discrimination. *Katzenbach* v. *Morgan,* 384 U.S. 641; *Gaston County* v. *United States,* 395 U.S. 285.

In *Gaston County,* a suit under Section 4(a) of the Voting Rights Act of 1965, this Court refused to per-

[18] A study conducted by the United States Commission on Civil Rights regarding northern and western states, based upon Bureau of the Census tabulations, indicated that "literacy tests do have a negative effect on voter registration and that this impact of literacy tests falls most heavily on blacks and persons of Spanish surname." See Sen. Hearings, *supra*, pp. 399–407.

[19] A statement of Raymond Nakai, the Chairman of the Navajo Tribal Council, said that Navajos in New Mexico (which has no literacy test) are much more likely to be registered voters than are members of the tribe residing in Arizona. According to Mr. Nakai, a major cause of the difference is the Arizona literacy requirement which prevents Navajos who cannot read English or are unsure of their command of English, from attempting to register. Sen. Hearings, p. 678. The Attorney General of Arizona pointed out that: "Many of the older Indians were never privileged to attend a formal school * * *." Sen. Hearings, p. 675. Cf. *Katzenbach* v. *Morgan*, *supra*.

[20] See, *e.g.*, Bureau of the Census, *1960 Census of Population*, vol. 1, pts. 4, 6, and 34, table 138, which shows a definite direct correlation between income and number of years of formal education completed.

mit reinstitution of a literacy test. Accepting as true the county's claim that prior to suspension the test had been administered in a fair and impartial manner and that the county had made significant strides toward equalizing and integrating its school system, the Court noted the "sad truth" that the county had in the past systematically deprived Negroes of the same educational opportunities as had been afforded to whites and that the administration of the literacy test would "serve only to perpetuate those inequities in a different form." 395 U.S. at 296–297.

Congress found, in light of such facts as (1) the failure of Negroes and other minorities, in various parts of the country, to receive equal educational opportunity and (2) the migration of Negroes from the South to literacy-test states, that the *Gaston County* rationale as to the discriminatory effects of literacy requirements applies throughout the United States, even though a particular literacy test is imposed by a government which has not failed to provide equal educational opportunity. The Court assumed in *Gaston County* that most of the adult residents of the county had been educated there (395 U.S. at 293, n. 9). The Court added, however, that: "It would seem a matter of no legal significance that they may have been educated in other counties or States also maintaining segregated and unequal school systems." [21] *Ibid.*

[21] In a prior footnote, the Court stated: "We have no occasion to decide whether the Act would permit reinstatement of a

As Attorney General Mitchell suggested in urging support of a nationwide ban on literacy tests, Congress could properly rely upon the fact that large numbers of Negroes have migrated from the South to other parts of the United States.[22] According to the Bureau of the Census, net migration of Negroes from the South between 1940 and 1969 totaled some 3.8 million persons.[23] That such persons received inferior education in segregated systems, both before and after 1954, is indicated by numerous court decisions.[24] And Congress had a valid basis for believing that part of the movement by southern Negroes was to the northern and western states which employ literacy tests.[25]

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literacy test in the face of racially disparate educational or literacy achievements for which a government bore no responsibility" (395 U.S. at 293, n. 8).

[22] Hearings on Voting Rights Act Extension before Subcommittee No. 5 of the House Judiciary Committee, 91st Cong., 1st Sess., p. 223 (hereinafter "House Hearings"); Sen. Hearings, p. 186.

[23] Bureau of the Census, *The Social and Economic Status of Negroes in the United States, 1969*, Current Population Reports, Series P–23, No. 29, p. 5.

[24] See, *e.g.*, *Lee* v. *Macon County Bd. of Ed.*, 267 F. Supp. 458, 471–472 (M.D. Ala.), affirmed, 389 U.S. 215; *United States* v. *Jefferson County Bd. of Ed.*, 372 F. 2d 836, 891–892 (C.A. 5), affirmed on rehearing *en banc*, 380 F. 2d 385, certiorari denied, 389 U.S. 840; *United States* v. *Mississippi*, 229 F. Supp. 925, 990 (S.D. Miss.) (dissenting opinion), reversed, 380 U.S. 128.

[25] For example, the 1960 Census indicates that even during the limited period, 1955–1960, there was substantial migration of Negroes from the South to such states as Arizona (4,388 persons, both adults and children), California (74,804), Massachusetts (7,418) and New York (74,821). See Bureau of the Census, *1960 Census of Population*, vol. I, pts. 4, 6, 23 and 34, table 100.

Finally, the Attorney General and other witnesses pointed out[26] that denial of equal educational opportunity occurs not only in school systems which had *de jure* segregation, but also in systems characterized by *de facto* segregation or racial isolation. The latter conditions exist throughout the United States,[27] including those states whose tests are suspended by Section 201.[28]

In short, the *Gaston County* rationale constitutes strong support for the suspension of literacy tests in the states and counties subject to Section 201.[29]

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[26] See House Hearings, p. 224; Sen. Hearings, p. 186.

[27] See, *e.g.*, House Hearings, p. 56 (statement of Howard A. Glickstein, then Acting Director of the United States Commission on Civil Rights).

[28] Apart from *de facto* segregation, official discrimination against Negroes or Mexican-Americans has been found in a number of public school systems in literacy-test states other than southern or border states. See *Gonzales* v. *Sheely*, 96 F. Supp. 1004, 1007 (D. Ariz.) (inferior schools afforded Mexican-Americans); *Spangler* v. *Pasadena Bd. of Ed.*, 311 F. Supp. 501 (C.D. Cal.) (discrimination against Negroes); *Crawford* v. *Bd. of Ed. of the City of Los Angeles*, No. 822, 854, Super. Ct. for L.A. County (May 12, 1970) (discrimination against Negroes); *Taylor* v. *Bd. of Ed. of City Sch. Dist. of New Rochelle*, 294 F.2d 36 (C.A. 2), certiorari denied, 368 U.S. 940 (racial segregation); and *Blocker* v. *Bd. of Ed. of Manhasset, New York*, 226 F. Supp 208 (E.D. N.Y.) (racial segregation).

[29] In light of the fact that Congress found the problem to be a substantial one in all states, its determination that the application of a uniform remedy to all of the states not covered by Section 4(a) would be "appropriate" surely was a permissible one—regardless of whether the dimensions of the problem are precisely the same in those states newly subject to the suspension as in those that were previously subject to it. Cf. *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489–490.

2. In addition to the purpose of Congress to eliminate, through the enactment of Section 201, the effects of unequal educational opportunity upon voter registration, Congress independently determined, as an alternate basis for enacting Section 201, that the possible interests of a state in maintaining a literacy requirement are not sufficient to justify the resulting disfranchisement. See 116 Cong. Rec. 2758 (daily ed., March 2, 1970) (joint statement of ten Senate Judiciary Committee members).

At the hearings on the legislation, many witnesses stated that, in view of the widespread availability of radio and television and the coverage given to local and national issues, a person need not be able to read to be informed.[30] The Report of the President's Commission on Registration and Voting Participation (November 1963) had reached the same conclusion and had recommended the abolition of literacy tests. Furthermore, most states do not have and never have had a literacy requirement as a precondition for voting. This shows that no "compelling state interest," in terms of either the quality of the electorate or administrative convenience, necessitates disfranchisement of persons unable to read and write.

[30] See, *e.g.*, House Hearings, p. 56 (Mr. Glickstein) and p. 222 (Attorney General Mitchell); Sen. Hearings, p. 185 (Attorney General Mitchell), and 468 (Bar Assn. of City of N.Y.).

CONCLUSION

For the foregoing reasons, the motions for leave to file the complaints, motions for expedited consideration and motion for interim relief should be granted.

Respectfully submitted.

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AUGUST 1970.

APPENDIX A

VOTING RIGHTS ACT AMENDMENTS OF 1970, P.L. 91–285, 84 STAT. 314

AN ACT To extend the Voting Rights Act of 1965 with respect to the discriminatory use of tests, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Voting Rights Act Amendments of 1970".

SEC. 2. The Voting Rights Act of 1965 (79 Stat. 437; 42 U.S.C. 1973 et seq.) is amended by inserting therein, immediately after the first section thereof, the following title caption:

"TITLE I—VOTING RIGHTS".

SEC. 3. Section 4(a) of the Voting Rights Act of 1965 (79 Stat. 438; 42 U.S.C. 1973b) is amended by striking out the words "five years" wherever they appear in the first and third paragraphs thereof, and inserting in lieu thereof the words "ten years".

SEC. 4. Section 4(b) of the Voting Rights Act of 1965 (79 Stat. 438; 42 U.S.C. 1973b) is amended by adding at the end of the first paragraph thereof the following new sentence: "On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous sentence, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any

test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968."

SEC. 5. Section 5 of the Voting Rights Act of 1965 (79 Stat. 439; 42 U.S.C. 1973c) is amended by (1) inserting after "section 4(a)" the following: "based upon determinations made under the first sentence of section 4(b)", and (2) inserting after "1964," the following: "or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the second sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968,".

SEC. 6. The Voting Rights Act of 1965 (79 Stat. 437; 42 U.S.C. 1973 et seq.) is amended by adding at the end thereof the following new titles:

"TITLE II—SUPPLEMENTAL PROVISIONS

"APPLICATION OF PROHIBITION TO OTHER STATES

"SEC. 201. (a) Prior to August 6, 1975, no citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State as to which the provisions of section 4(a) of this Act are not in effect by reason of determinations made under section 4(b) of this Act.

"(b) As used in this section, the term 'test or device' means any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate

the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

"RESIDENCE REQUIREMENTS FOR VOTING

"SEC. 202. (a) The Congress hereby finds that the imposition and application of the durational residency requirement as a precondition to voting for the offices of President and Vice President, and the lack of sufficient opportunities for absentee registration and absentee balloting in presidential elections—

"(1) denies or abridged the inherent constitutional right of citizens to vote for their President and Vice President;

"(2) denies or abridges the inherent constitutional right of citizens to enjoy their free movement across State lines;

"(3) denies or abridges the privileges and immunities guaranteed to the citizens of each State under article IV, section 2, clause 1, of the Constitution;

"(4) in some instances has the impermissible purpose or effect of denying citizens the right to vote for such officers because of the way they may vote;

"(5) has the effect of denying to citizens the equality of civil rights, and due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment; and

"(6) does not bear a reasonable relationship to any compelling State interest in the conduct of presidential elections.

"(b) Upon the basis of these findings, Congress declares that in order to secure and protect the above-stated rights of citizens under the Constitution, to enable citizens to better obtain the enjoyment of such rights, and to enforce the guarantees of the fourteenth amendment, it is necessary (1) to completely abolish the durational residency requirement as a precondition to voting for President and Vice President, and (2) to establish nationwide, uniform standards relative to absentee registration and absentee balloting in presidential elections.

"(c) No citizen of the United States who is otherwise qualified to vote in any election for President and Vice President shall be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to comply with any durational residency requirement of such State or political subdivision; nor shall any citizen of the United States be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to be physically present in such State or political subdivision at the time of such election, if such citizen shall have complied with the requirements prescribed by the law of such State or political subdivision providing for the casting of absentee ballots in such election.

"(d) For the purposes of this section, each State shall provide by law for the registration or other means of qualification of all duly qualified residents of such State who apply, not later than thirty days immediately prior to any presidential election, for registration or qualification to vote for the choice of electors for President and Vice President or for President and Vice President in such election; and each

State shall provide by law for the casting of absentee ballots for the choice of electors for President and Vice President, or for President and Vice President, by all duly qualified residents of such State who may be absent from their election district or unit in such State on the day such election is held and who have applied therefor not later than seven days immediately prior to such election and have returned such ballots to the appropriate election official of such State not later than the time of closing of the polls in such State on the day of such election.

"(e) If any citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any election for President and Vice President has begun residence in such State or political subdivision after the thirtieth day next preceding such election and, for that reason, does not satisfy the registration requirements of such State or political subdivision he shall be allowed to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election, (1) in person in the State or political subdivision in which he resided immediately prior to his removal if he had satisfied, as of the date of his change of residence, the requirements to vote in that State or political subdivision, or (2) by absentee ballot in the State or political subdivision in which he resided immediately prior to his removal if he satisfies, but for his nonresident status and the reason for his absence, the requirements for absentee voting in that State or political subdivision.

"(f) No citizen of the United States who is otherwise qualified to vote by absentee ballot in any State or political subdivision in any election for President and Vice President shall be denied the right to vote for the choice of electors for President and Vice Pres-

ident, or for President and Vice President, in such election because of any requirement of a registration that does not include a provision for absentee registration.

"(g) Nothing in this section shall prevent any State or political subdivision from adopting less restrictive voting practices than those that are prescribed herein.

"(h) The term 'State' as used in this section includes each of the several States and the District of Columbia.

"(i) The provisions of section 11(c) shall apply to false registration, and other fraudulent acts and conspiracies, committed under this section.

"JUDICIAL RELIEF

"SEC. 203. Whenever the Attorney General has reason to believe that a State or political subdivision (a) has enacted or is seeking to administer any test or device as a prerequisite to voting in violation of the prohibition contained in section 201, or (b) undertakes to deny the right to vote in any election in violation of section 202, he may institute for the United States, or in the name of the United States, an action in a district court of the United States, in accordance with sections 1391 through 1393 of title 28, United States Code, for a restraining order, a preliminary or permanent injunction, or such other order as he deems appropriate. An action under this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2282 of title 28 of the United States Code and any appeal shall be to the Supreme Court.

"PENALTY

"SEC. 204. Whoever shall deprive or attempt to deprive any person of any right secured by section 201

or 202 of this title shall be fined not more than $5,000, or imprisoned not more than five years, or both.

"SEPARABILITY

"SEC. 205. If any provision of this Act or the application of any provision thereof to any person or circumstance is judicially determined to be invalid, the remainder of this Act or the application of such provision to other persons or circumstances shall not be affected by such determination.

"TITLE III—REDUCING VOTING AGE TO EIGHTEEN IN FEDERAL, STATE, AND LOCAL ELECTIONS

"DECLARATION AND FINDINGS

"SEC. 301. (a) The Congress finds and declares that the imposition and application of the requirement that a citizen be twenty-one years of age as a precondition to voting in any primary or in any election—

"(1) denies and abridges the inherent constitutional rights of citizens eighteen years of age but not yet twenty-one years of age to vote—a particularly unfair treatment of such citizens in view of the national defense responsibilities imposed upon such citizens;

"(2) has the effect of denying to citizens eighteen years of age but not yet twenty-one years of age the due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment of the Constitution; and

"(3) does not bear a reasonable relationship to any compelling State interest.

"(b) In order to secure the constitutional rights set forth in subsection (a), the Congress declares that it

is necessary to prohibit the denial of the right to vote to citizens of the United States eighteen years of age or over.

"PROHIBITION

"SEC. 302. Except as required by the Constitution, no citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any primary or in any election shall be denied the right to vote in any such primary or election on account of age if such citizen is eighteen years of age or older.

"ENFORCEMENT

"SEC. 303. (a)(1) In the exercise of the powers of the Congress under the necessary and proper clause of section 8, article I of the Constitution, and section 5 of the fourteenth amendment of the Constitution, the Attorney General is authorized and directed to institute in the name of the United States such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the purposes of this title.

"(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title, which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

"(b) Whoever shall deny or attempt to deny any person of any right secured by this title shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"DEFINITION

"SEC. 304. As used in this title the term 'State' includes the District of Columbia.

"EFFECTIVE DATE

"SEC. 305. The provisions of title III shall take effect with respect to any primary or election held on or after January 1, 1971."

Approved June 22, 1970.

APPENDIX B

Article 7, Section 2 of the Arizona Constitution provides: No person shall be entitled to vote at any general election, or for any office that now is, or hereafter may be, elective by the people, or upon any question which may be submitted to a vote of the people, unless such person be a citizen of the United States of the age of twenty-one years or over, and shall have resided in the State one year immediately preceding such election, provided that qualifications for voters at a general election for the purpose of electing presidential electors shall be as prescribed by law. The word 'citizen' shall include persons of the male and female sex.

The rights of citizens of the United States to vote and hold office shall not be denied or abridged by the state, or any political division or municipality thereof, on account of sex, and the right to register, to vote and to hold office under any law now in effect, or which may hereafter be enacted, is hereby extended to, and conferred upon males and females alike.

No person under guardianship, non compos mentis, or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony, be qualified to vote at any election unless restored to civil rights.

Sections 16–101 and 16–107 of the Arizona Revised Statutes provide as follows:

§16–101. Qualifications of elector

A. Every resident of the state is qualified to become an elector and may register to vote at all elections authorized by law if he:

1. Is a citizen of the United States.

2. Will be twenty-one years or more of age prior to the regular general election next following his registration.

3. Will have been a resident of the state one year and of the county and precinct in which he claims the right to vote thirty days next preceding the election.

4. Is able to read the Constitution of the United States in the English language in a manner showing that he is neither prompted nor reciting from memory, unless prevented from so doing by physical disability.

5. Is able to write his name, unless prevented from so doing by physical disability.

B. At an election held between the date of registration and the next regular general election, the elector is eligible to vote if at the date of the intervening election he is twenty-one years of age and has been a resident of the state one year and the county and precinct thirty days.

C. A person convicted of treason or a felony, unless restored to civil rights, or an idiot, insane person or person under guardianship is not qualified to register.

§ 16-107. Closing of registrations

A. No elector shall be registered to vote in a primary election between five o'clock p.m. of the day which is four months preceding the date of the next general election and six o'clock p.m. of the day of the primary election.

B. No elector shall be registered between five o'clock p.m. of the seventh Monday preceding a general election and six o'clock p.m. of the day thereof. As amended Laws 1958, Ch. 48, § 1.

APPENDIX C

Article 6, Section 2 of the Idaho Constitution provides:

Qualifications of electors.—Except as in this article otherwise provided, every male or female citizen of the United States, twenty-one years old, who has actually resided in this state or territory for six months, and in the county where he or she offers to vote, thirty days next preceding the day of election, if registered as provided by law, is a qualified elector; provided however, that every citizen of the United States, twenty-one years old, who has actually resided in this state for sixty days next preceding the day of election, if registered as required by law, is a qualified elector for the sole purpose of voting for presidential electors; and until otherwise provided by the legislature, women who have the qualifications prescribed in this article may continue to hold such school offices and vote at such school elections as provided by the laws of Idaho territory.

Sections 34-401, 34-408, 34-409, 34-1101 and 34-1105 provide in pertinent part:

34-401. Qualifications of voters.—Every person over the age of twenty-one (21) years, possessing the qualifications following, shall be entitled to vote at all elections: He shall be a citizen of the United States and shall have resided in this state six (6) months immediately preceding the election at which he offers to vote, and in the county thirty (30) days: provided, that no person shall be permitted to vote at any county seat election who has not resided in the county six (6) months, and in the precinct ninety (90) days,

where he offers to vote; nor shall any person be permitted to vote at any election for the division of the county, or striking off from any county any part thereof, who has not the qualifications provided for in section 3, article 18, of the constitution; nor shall any person be denied the right to vote at any school district election, nor to hold any school district office on account of sex.

34-408. Eligibility of new residents to vote.—Each citizen of the United States who, immediately prior to his removal to this state, was a citizen of another state and who has been a resident of this state for sixty (60) days next preceding the day of election but for less than the six (6) month period of required residence for voting prior to a presidential election, is entitled to vote for presidential and vice-presidential electors at that election, but for no other offices, if

(1) he otherwise possesses the substantive qualifications to vote in this state, except the requirement of residence and registration, and

(2) he complies with the provisions of this act.

34-409. Application for presidential ballot by new residents.—A person desiring to qualify under this act in order to vote for presidential and vice-presidential electors shall be considered as registered within the meaning of this act if on or before ten (10) days prior to the date of the general election, he shall make an application in the form of an affidavit executed in duplicate in the presence of the county auditor, substantially as follows * * *.

34-1101. Absent voting authorized.—Any qualified elector of the state of Idaho who is absent or expects to be absent from the election precinct in which he resides on the day of holding any election under any of the laws of this state in which an official ballot is

required, or who is within the election precinct and is, or will be, unable, because of physical disability, or because of blindness, to go to the voting place, and if registration is required for such election, who is duly registered therefor, may vote at any such election, as hereinafter provided.

34–1105. Return of ballot.—On marking such ballot or ballots such absent or disabled or blind elector shall refold same as theretofore folded and shall inclose the same in said official envelope and seal said envelope securely and mail by registered or certified mail or deliver it in person to the officer who issued same; provided, that an absentee ballot must be received by the issuing officer by 12:00 o'clock noon on the day of the election before such ballot may be counted. Said ballot or ballots shall be so marked, folded and sealed by said voter in private and secretly. Provided, that whenever the disability or blindness makes it necessary that the voter shall be assisted in marking his ballot, such voter may have the assistance of any person of his choice in marking his ballot.

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Return to motion for
leave to file Complaint &
to Appellate not printed.